

COMMONWEALTH OF KENTUCKY
BEFORE THE UTILITY REGULATORY COMMISSION

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In the Matter of:

THE APPLICATION OF WARREN COUNTY WATER)
DISTRICT, WARREN COUNTY, KENTUCKY,)
(1) FOR A CERTIFICATE OF CONVENIENCE)
AND NECESSITY AUTHORIZING THE DISTRICT)
TO ACQUIRE THE EXISTING MUNICIPAL WATER)
SYSTEM OF THE CITY OF SMITHS GROVE, IN)
WARREN COUNTY, KENTUCKY, PURSUANT TO THE) CASE NO. 7674
PROVISIONS OF CHAPTER 74 OF THE KENTUCKY)
REVISED STATUTES; (2) SEEKING RATIFICA-)
TION OF THE EXISTING SCHEDULE OF WATER)
SERVICE RATES AND CHARGES OF THE DISTRICT,)
AND (3) SEEKING APPROVAL OF THE ISSUANCE)
OF CERTAIN SECURITIES.)

O R D E R

Preface

On November 30, 1979, Warren County Water District ("Purchaser") and the City of Smiths Grove ("Seller") filed with the Commission an application seeking approval of the sale and purchase of the City of Smiths Grove Water System in accordance with the terms of a contract dated July 23, 1979.

This matter was set for hearing at the Commission's offices in Frankfort, Kentucky, on January 25, 1980. All parties of interest were notified with the Consumer Protection Division of the Attorney General's Office being permitted to intervene in this matter. At the hearing certain requests for information were made by the Staff. This information has now been received and the entire matter is now considered to be fully submitted for a final determination by this Commission.

Findings in This Matter

The Commission, after a review of the record and being fully advised is of the opinion and finds:

(1) That for the purpose of transferring all of the water system facilities of the City of Smiths Grove, the Seller and the Purchaser have entered into an Agreement dated July 23, 1979, a

copy of which is attached hereto and made a part hereof as Appendix "A". By said Agreement, the City of Smiths Grove agrees to sell and the Warren County Water District agrees to purchase all assets of the City of Smiths Grove Water System. Further, that the Purchaser will assume the liabilities of the Seller with respect to the Seller's municipal water system.

(2) That the assumption of the Seller's liabilities may be carried out by the discharge and cancellation of the Seller's existing Waterworks System Revenue Bonds in the amount of \$296,000 and issuance by the Purchaser of identical new Water Revenue Bonds on a basis of parity with the currently outstanding Water Revenue Bonds in accordance with the terms of the Basic Bond Resolution adopted by the Purchaser on May 15, 1974.

(3) That for financial reason, the transfer should be effective as of the close of business on December 31, 1979.

(4) That the Purchaser is ready, willing and able to provide for the operation and maintenance of the existing water system in the area set forth in the application.

(5) That the sale of the Smiths Grove Water System does not adversely affect the public interest and should be approved.

(6) That the customers of the Seller will be charged for water service in accordance with the approved rate schedules of the Purchaser.

(7) That the Purchaser should file with the Commission the appropriate journal entries effecting the purchase of the Smiths Grove Water System.

Orders in This Matter

The Commission, on the basis of the matters hereinbefore set forth and the evidentiary record in this case:

HEREBY ORDERS that the Warren County Water District is hereby authorized to purchase the Smiths Grove Water System in accordance with the terms of sale as set forth in the Agreement

dated July 23, 1979, and attached hereto and made a part hereof
as Appendix "A".

Done at Frankfort, Kentucky, this 19th day of February, 1980.
UTILITY REGULATORY COMMISSION


CHAIRMAN


VICE-CHAIRMAN


COMMISSIONER

ATTEST:

SECRETARY

AGREEMENT

THIS AGREEMENT made and entered into this 23 day of July, 1979, by and between THE WARREN COUNTY WATER DISTRICT, hereinafter sometimes referred to as the "District, a water district duly organized pursuant to KRS Chapter 74 and situated in Warren County, Kentucky; and THE CITY OF SMITHS GROVE, KENTUCKY, hereinafter sometimes referred to as the "City", a duly organized city of the fifth class situated in Warren County, Kentucky.

W I T N E S S E T H

WHEREAS, the District is a duly organized and existing water district pursuant to the statutory laws of the Commonwealth of Kentucky, including particularly, Chapter 74 of the Kentucky Revised Statutes. Said water district having been created by the County Court of Warren County, Kentucky for the public purposes inter alia set forth in said KRS Chapter 74, and has, since its date, occupied an encompassed territory substantially contiguous to the territory of the City of Smiths Grove and;

WHEREAS, the City is a duly organized and existing city of the fifth class pursuant to the Constitution of Kentucky and the statutory laws of the Commonwealth of Kentucky, including particularly, Chapter 81 of the Kentucky Revised Statutes, and as such, is authorized to supply the residents of said City with potable water and;

WHEREAS, the City in its capacity as the owner of the Smiths Grove water system and the District perform similiar public purposes and each occupying an encompassed territory substantially contiguous to the territory of the other and;

WHEREAS, the Commissioners of the Warren County Water District and the Board of Trustees of the City of Smiths Grove have, upon due consideration, by unanimous resolution, determined that the most successful and property attainment of the public purposes for which the said District was created would be served, enhanced and simulated and that the best interest of the citizens of the City of Smiths Grove, to which the City owes a duty, would be best served by the acquisition by the said Warren County Water District of the Cities said water system, and;

WHEREAS, the District has the requisite expertise to manage said water system and is presently in the process of expanding its realm of operations throughout that portion of Warren County in which the City of Smiths Grove is situated and;

WHEREAS, the District is desirous of acquiring said facilities and of assuming all of the City's said obligations and responsibilities for providing the citizens of the City of Smiths Grove, a regular, potal water supply.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements hereinafter set forth, the Warren County Water District agrees to acquire and the City of Smiths Grove agrees to convey, subject to the terms hereof, all assets of the City of Smiths Grove water system. In order to effectuate, implement and carry out this transaction, the parties do hereby covenant and agree, each with the other as follows:

1. CONDITIONS- PRECEDENT TO ACQUISITION

(a) Pursuant to the provisions of KRS 96.540, the Board of Trustees of the City of Smiths Grove, Kentucky, shall put to the voters of said City, the question of whether or not the voters consent to the sale of the City's water system to the Warren County Water District by placing on the ballot at the next general election to be held in the City of Smiths Grove, the following question: "Do you Consent to the Acquisition by the Warren County Water District of all assets and all liabilities and obligations of the City of Smiths Grove water system"? Said Trustees shall further comply with all applicable provisions of KRS 96.540 and KRS Chapter 424 relating to notice of the election as set out therein.

(b) Upon final tabulation of all the votes cast in said election, if a majority of the total number of the legal voters voted in said election approved the transfer of the City's water system, then within ninety (90) days of the certification of the election the City shall transfer to the Warren County Water District all of the City's said water facilities, real, personal and mixed, wheresoever situated and debts due to the said City of Smiths Grove for operation of said water system on whatever accounts, if any, and all other choses in action. Said transfer shall be deemed to have been made and all assets shall be deemed to have been transferred to and vested in the Warren County Water District.

District, without further official act or action of either of the parties to this agreement upon the effective date of said transfer as hereinabove set forth. The City of Smiths Grove, in order to effectuate this transaction, shall execute a blanket transfer of easement for all easements owned by it, as well as a general warranty deed of conveyance and bill of sale, for all real and personal property owned by it to the Warren County Water District.

(c) Should a majority of the voters casting ballots in said election not approve the transfer of the City's water system to the Warren County Water District, then and in that event, this Agreement shall be null and void and of no further force and effect.

2. Upon the date for closing as hereinabove set forth and simultaneously with the acceptance by the District of the blanket transfer of easement, deed of conveyance and bill of sale, the District shall immediately become responsible for and assume all of the liabilities of the City of Smiths Grove water system in the same manner as if the said District had itself incurred all such liabilities.

3. The City of Smiths Grove water system has from time to time issued its Revenue Bonds and same, in a number of different series are outstanding at this time. The City of Smiths Grove hereby warrants and represents that all of such securities are presently owned and held by agencies of the United States Government. It is the intent of the parties to this Agreement that all bonded indebtedness of the said City of Smiths Grove water system be assumed by the Warren County Water District either by actual assumption of same or by the discharge and cancellation and issuance of identical new bonded indebtedness of the Warren County Water District on a pari passu basis to be issued to substitution thereof. When said City of Smiths Grove shall cooperate with the Warren County Water District in securing approval from such agencies of the Federal Government as are the owners of the various issues of Revenue Bonds of said City of Smiths Grove, if deemed necessary by the Warren County Water District.

Should the present owners of the various issues of Revenue Bonds of the said City of Smiths Grove not consent to and approve the assumption or exchange hereinabove contemplated of their said Bonds, then and in that event, this Agreement shall be null and void and of no further force and effect.

4. The City of Smiths Grove warrants, covenants and represents to the Warren County Water District that it is a duly organized city of the fifth class pursuant to the Constitution of the Commonwealth of Kentucky and the applicable statutory law, that it is not subject to any restrictions resulting from any Court actions, judicial or administrative order, consent decree or restrictions of a contractual nature, which would prevent or adversely effect the consummation of this Agreement and that it has good and marketable title to all the real, personal and mixed property owned by it and reflected in the balance sheet of the City of Smiths Grove water system, dated 30 June 1979, subject to no mortgage liens, charges, pledges or encumbrances of any kind, or defects of any nature whatsoever, except as set forth in said balance sheet, a certified copy of said balance sheet is attached hereto marked Exhibit "A" and incorporated herein as if copied in full.

5. City of Smiths Grove further warrants and represents to the Warren County Water District that it has, in all material respects, performed all obligations required to be performed by it to date pursuant to any contracts to which it is a party and it is not in default in any material respect, under any contract or other document to which it is a party or by which it is bound.

6. All of the property, real, personal and mixed wheresoever situated, used and usable by the City of Smiths Grove water system and the conduct of its public operations shall pass to and become the property of the Warren County Water District.

7. The City of Smiths Grove water system warrants and represents to the Warren County Water District that since the date of the financial reports and balance sheets mentioned in paragraph 4 hereof, there has not been:

1. Any material adverse change in the financial condition or position or in the operations or public business, other than expressly disclosed pursuant to this Agreement.

2. Any other event, occurrence, transaction or condition of any character pertaining to and materially and adversely affecting the results of the operations and the public business, financial position and financial integrity or prospects of the said City.

8. As of the date of this Agreement, there is no pending nor to the knowledge of any of the Trustees of the City of Smiths Grove, any threatened claim, litigation or administrative proceeding, inquiry or investigation against the said City, individually or with respect to the properties of the said City or the acts of the Trustees of the City by any person, corporation, firm, governmental agency, governmental officer, bond holder, indenture trustee or any other entity which might result in any material adverse change in the financial position, business standing, assets, properties or operations of the City of Smiths Grove, or materially interfere in the future with the continued public operation of the City of Smiths Grove water system.

9. An authorized representative of the Warren County Water District shall have full and free access during normal business hours to all properties, books, contracts, documents and materials of the City of Smiths Grove water system. Each party shall furnish the other information with the respect to the affairs and business of the other party which same may reasonably request.

10. Each of the parties shall carry on its respective public business and business endeavors in substantially the same manner as heretofore, subject to the restrictions specifically enumerated in this Agreement.

11. Each party to this Agreement shall maintain and keep its physical operations, equipment and properties in as good repair, working order and condition as at present, except for depreciation due to ordinary wear and tear and damage due to casualty. All such property shall be continually insured as at present and Fidelity and Guaranty Bonds as currently in a force shall continue to be carried on personnel of each party presently so bonded.

12. Each of the parties to this Agreement shall perform in due and proper form and manner all of their obligations under legal contracts, leases and other documents relating to its properties and business.

13. The closing transaction contemplated by this Agreement shall take place on or before ninety (90) days from the date of certification of the election set forth in paragraph 1-B hereinabove. Said closing shall take place at the offices of the Warren County Water District, 920 Fairview Avenue, Bowling Green, Kentucky or such other location as may be agreed to by both parties.

14. The obligation of each of the parties to this Agreement are subject to the satisfaction at or prior to the closing date of the following conditions.

(a) The representations and warranties of each of the parties to this Agreement to the other shall be true and correct as of the closing date, as though such representations and warranties were made at and as of the closing date.

(b) Each of the parties to this Agreement shall have performed and complied in all material respects with all of their respective obligations under this Agreement, which are due to be performed or complied with by such parties prior to or on the closing date.

(c) At and as of the closing date, no litigation, proceedings, investigation or inquiries shall be pending or threatened by any person, firm, corporation, governmental agency, or governmental official to enjoin or prevent the consummation of this transaction.

15. On the effective date of the closing, the Warren County Water District shall possess all of the rights, privileges, powers, franchises and trusts and fiduciary duties, powers and obligations, subject to all the restrictions, disabilities and duties of each of the parties to this Agreement and all and singular the rights, privileges, powers and franchises and trusts and fiduciary rights, powers, duties and obligations of each of the parties to this Agreement shall be vested in the Warren County Water District and all property rights, privileges, powers, franchises and all and every other interest shall be thereafter as effectually the property of the Warren County Water District, as they were of the City of Smiths Grove water system, provided however, that all rights of creditors and all liens upon any property of either of the parties shall be preserved and unimpaired and all debts, liabilities and duties of the parties shall thenceforth attach to the Warren County Water District and may be enforced against it to the same extent, as if such debts, liabilities and duties have been incurred or contracted by the Warren County Water District. Upon the effective date of the transfer of the facilities owned by the City to the District, the rates to be charged all users, previously served by the City and now to be serviced by the District for use of water and sewer facilities shall be those rates in force and effect on said effective date of transfer, charged ^{for use of water and sewer facilities} by the Warren County Water District for all other users of its said water and sewer facilities.

Insofar as this Agreement contemplates the assumption by Warren County Water District of an increased indebtedness and insofar as same may be necessary, the Petition shall be presented to the Public Service Commission of the Commonwealth of Kentucky requesting said Commission's approval of the acquisition of assets and liabilities of the City of Smiths Grove water system by the Warren County Water District. The City of Smiths Grove shall cooperate with the District in securing approval of the Public Service Commission of this transaction if deemed necessary by the District. Should the Public Service Commission disapprove this transaction, then and in that event, this Agreement shall be null and void and of no further force and effect.

16. The City hereby affirmatively represents that it will grant to the District such franchises, easements, rights of way, and other rights as may be deemed necessary by the District for the District's operation of its water system in the city of Smiths Grove, Kentucky, and further agrees that it will execute any and all documents, resolutions, ordinances and agreements which may be requested to effectuate the purposes contemplated by this agreement.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement in one or more counterparts for the signature of the Chairman of the Warren County Water District, attested by its Secretary and the Chairman of the Board of Trustees of the City of Smiths Grove, attested by its Secretary, as of the day and date specifically set forth on Page 1 of this Agreement.

WARREN COUNTY WATER DISTRICT

BY: Maurice J. Jenkins

CHAIRMAN

ATTEST:

L. E. Smith
SECRETARY

CITY OF SMITHS GROVE, KENTUCKY

BY: Cecelia B. Hall

CHAIRMAN OF THE BOARD OF TRUSTEES

ATTEST:

Lee M. Edwards
SECRETARY